United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1572

To be argued by
PETER M. BLOCH

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1572

B
P/S

UNITED STATES OF AMERICA,
Appellee,

—v.—

ROBERT GRANT,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

Robert Grant appeals from a judgment of conviction entered on November 18, 1976, in the United States District Court for the Southern District of New York after a plea of guilty before the Honorable Kevin T. Duffy, United States District Judge.*

Indictment 76 Cr. 762 (KTD), filed in 16 Counts on August 13, 1976, charged Robert Grant and George Law-

* Grant pleaded guilty subject to the express condition that he preserve for appeal to this Court the issues raised in his motion to suppress filed September 1, 1976. (Transcript of October 26, 1976, at p. 2-3). This Court has authorized this procedure. *United States* v. *Mullens*, 536 F.2d 997 (2d Cir. 1976); *United States* v. *Bronstein*, 521 F.2d 459, 460 (2d Cir. 1975), *cert. denied*, 424 U.S. 918 (1976); *United States* v. *Pond*, 523 F.2d 210, 212 (2d Cir. 1975), *cert. denied*, 423 U.S. 1058 (1976); *United States* v. *Burke*, 517 F.2d 377, 379 (2d Cir. 1975).

rence in Counts One through Fifteen with possession of United States Treasury checks stolen from the mail in violation of Title 18, United States Code, Sections 1708 and 2, and in Count Sixteen with forging the name of the payee on a United States Treasury check in violation of Title 18, United States Code, Sections 495 and 2. Both Grant and Lawrence moved to suppress the physical evidence seized at the time of their arrests and resulting confessions on the grounds they were the fruit of an unlawful arrest. Grant additionally moved to suppress his statement on involuntariness grounds. On October 14, 1976, an evidentiary hearing was held before the Honorable Robert L. Taylor * on these motions. Judge Taylor denied all of them in a 16 page opinion, as yet unreported, filed October 15, 1976.**

On November 18, 1976 Grant was sentenced to three years imprisonment on each of Counts One through Eight to run concurrently on each count and with a state sentence Grant is presently serving. Grant has been in custody since his arrest.

Statement of Facts

The Testimony

At about 2:45 P.M. on August 3, 1976, at the Playland Arcade on West 42nd Street in New York City, Secret Service Special Agent Charles Quinn, who was at Playland with another Special Agent, Thomas Dougherty,

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* United States District Judge for the Eastern District of Tennessee, sitting by designation.

** Grant has not appealed Judge Taylor's denial of his claim that his confession was involuntary. Lawrence, who raised only the issue presented by Grant on this appeal, also pleaded guilty to Counts One through Eight, reserving his right to appeal, but has not appealed.

observed two young men approach a counter where false identification cards commonly used in connection with forging and uttering United States Treasury checks as well as other checks, were sold. Quinn had personally been involved with "no less than 25 cases" concerning forged Treasury checks and possession of stolen mail where false identification purchased at Playland had been used.* (Tr. 4-5; Op. 3)** Quinn, a seven-year veteran of the Secret Service who had been involved in excess of 400 arrests for offenses involving stolen checks and stolen mail, observed one of the men, later identified as Robert Grant, purchase two facsimile social security cards at Playland. Quinn also noted that Grant's associate, later identified as George Lawrence, was carrying a bulky package concealed within a newspaper. (Tr. 4-8, Op. 3-4). When Grant and Lawrence left Playland, the agents followed them east to Time's Square and then north on Seventh Avenue. The defendants conversed with each other during this time. (Tr. 8; Op. 4).

As the agents gradually narrowed the gap between themselves and the defendants, Quinn observed what appeared to be a Polaroid camera through a hole in the bag carried by Lawrence. As the agents drew closer, Quinn noticed the corner of a green United States Treasury check. He also saw the corners of at least two manila

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* Agent Quinn was training Agent Dougherty on August 3rd, by taking him to a place where false identification for check cashing purposes was purchased. August 3 was "check day", that is, the day on which Social Security checks, the most plentiful checks issued by the Government, are issued. Supplemental Security Income checks were issued the previous day. (Tr. 5-6; Op. 3).

** "Tr." refers to the page of the transcript of the hearing held October 14, 1976. "Op." refers to the page in Judge Taylor's opinion.

envelopes, consistent in color with those used to mail Treasury checks, visible in the bag being held under Lawrence's arm. (Tr. 9; Op. 4-5). At about this time Quinn observed Lawrence turn and apparently notice Agent Dougherty following him. Lawrence stiffened and shuddered with apparent recognition. (Tr. 10, Op. 6).

As the defendants were crossing 45th Street, Agent Quinn came alongside the defendants, exhibited his badge, stated he would like to talk to the defendants and requested that Grant and Lawrence "please pull off when they got across the intersection." (Tr. 10; Op. 6). At this time, there were no weapons exhibited by the officers who were dressed in plain clothes. No physical force or other means of coercion was employed upon the defendants. The paths of the defendants were not blocked, their freedom of movement was not restrained in any way and they were free to walk away. The defendants were not under arrest, nor did Quinn intend to arrest them. (Tr. 10-11, 58, 67; Op. 6, 8).

On the northwest corner of 45th Street and Seventh Avenue, a busy corner at that time of day, Agent Quinn asked Grant if he had been in Playland purchasing identification and, after hesitating Grant said he had. (Tr. 11-12, 43; Op. 6). After an additional hesitation in responding to Quinn, Grant explained that he had bought the cards for himself, but avoided saying exactly what he intended to do with them. (Tr. 11-12; Op. 6). Agent Quinn then asked Lawrence "Could I see what you have in that package?" Lawrence voluntarily handed the package over to Agent Quinn.* Quinn took the package given to him by Lawrence, placed it on the sidewalk and examined its contents. (Tr. 12; Op. 6).

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* Grant does not dispute the finding of Judge Taylor that the bag was handed over voluntarily.

Upon opening the bag, Agent Quinn observed: 1) a United States Treasury check payable to a "Freddie Mitchell" addressed to a location much farther uptown in Manhattan than Playland; 2) a New York City medical identification card in the name of "Freddie Mitchell" in which the sex designation of "Freddie Mitchell" had been changed from "female" to "male" and the year of birth altered; 3) four or five commercial checks made out to different payees, all but one of which contained printed addresses as well as the payees' names;* 4) several additional pieces of identification, some in blank, of which several were of the type normally purchased at Playland; 5) a package of mutoscope plastic commonly used to seal pieces of identification; 6) various envelopes, one of considerable bulk labeled "Jursey [sic] checks"; 7) some loose photographs of both Lawrence and Grant of the type generally used on identification cards; 8) an elctronic calculator.** (Tr. 12-20; Op. 6-7; GX 2-9).

At this point, the defendants were handcuffed and placed under arrest and the bag was seized. (Tr. 20; Op. 7). Later inspection of the bag revealed that it contained a total of about 22 commercial checks, 29 Treasury checks and 42 pieces of identification. (GX 2-13; Tr. 21-24). A personal search of the defendants at the New York Field Office revealed an additional commercial check on Grant and false identification on both defendants. (Tr. 33-36; GX 17-18; Op. 7).

In the New York Field Office of the Secret Service, after agents advised them of their constitutional rights, Grant and Lawrence gave partially conflicting but fully

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* Agent Quinn noted that checks of this sort are generally sent through the mails. (Tr. 19-20).

** This was the object Quinn believed to be a Polaroid camera.

inculpatory admissions concerning their possession of stolen mail.* (Tr. 26-30; Op. 7).

Both Grant and Lawrence testified at the hearing. Lawrence testified he did not go into Playland with Grant and that when first confronted by Quinn he was thrown against the wall and the bag taken from him. Grant testified that he and Lawrence were immediately told by Quinn they were under arrest, and the bag was taken from Lawrence. (Tr. 75-95).

Judge Taylor's Decision

Judge Taylor rejected the conflicting testimony of Grant and Lawrence and found unequivocally "that Quinn's testimony was an accurate account of the facts concerning the events in question which occurred [on] August 3, 1976." (Op. 10). He concluded that the arrest and seizure of evidence were valid in all respects. In particular, he found 1) that Quinn's initial contact with the defendants was not an arrest but rather an investigative stop "based on a reasonable suspicion that the defendants were engaging or preparing to engage in criminal activity" (Op. 11); 2) that Lawrence valuntarily consented to the search of the paper bag (Op. 12-13); and 3) that after examining the bag Quinn had probable cause to arrest both Grant and Lawrence and seize the paper bag. (Op. 13-14).

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* Lawrence gave oral admissions as well as a signed confession in writing. Grant gave oral admissions, refusing to put them in writing when he became aware Lawrence had given a different version than his. (Tr. 30).

ARGUMENT

The Arrest and Search of Grant Were Proper In Al Respects.

Grant argues that "he was effectively arrested on 45th Street and Seventh Avenue when Quinn told him to stop, asked him questions about Social Security cards and then recovered the package from Lawrence." (Br. at 5). As Grant's brief is unclear as to whether it is the initial stop or the ultimate arrest he alleges was unjustified, the Government will respond to both alternatives, each of which is entirely devoid of merit.

A. The Stop

The District Court held that Quinn's request that Grant and Lawrence "pull off" at 45th Street and Seventh Avenue was a proper investigative stop. (Op. 12-13). In doing so it properly followed the standards set forth in *United States* v. *Brignoni-Ponce*, 422 U.S. 873 (1975); *Adams* v. *Williams*, 407 U.S. 143 (1972); *Terry* v. *Ohio*, 392 U.S. 1 (1968), and numerous cases in this Circuit. The Supreme Court stated in *Adams*:

> "In *Terry* this Court recognized that 'a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.' *Id.*, at 22. The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate

> response. See *id.* at 23. A brief stop of the suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." (Citations omitted) 407 U.S. at 145-46.

These cases provide for a far lower quantum of suspicion to justify an investigative stop than required to justify an arrest. This Court has described the test for a "stop" articulated in *Adams* as a "rather lenient" one, *United States* v. *Santana*, 485 F.2d 365, 368 (2d Cir. 1973), *cert. denied*, 415 U.S. 931 (1974); *United States* v. *Magda*, — F.2d —, Dkt. No. 76-1298, Slip op. 1037, 1042 (2l Cir., December 22, 1976). It has also deemed an investigatory stop to be a "mild intrusion" into defendant's privacy. *United States* v. *Riggs*, 474 F.2d 699, 703 (2d Cir.), *cert. denied*, 414 U.S. 820 (1973). As such, the stop may be justified by the mere "reasonable suspicion" that the suspect was "a participant in violating the law." *United States* v. *Salter*, 521 F.2d 1326, 1328 (2d Cir. 1975). *Terry* v. *Ohio*, *supra*; *United States* v. *Magda*, *supra*; *Ojeda-Vinales* v. *Immigration and Naturalization Service*, 523 F.2d 286 (2d Cir. 1975).

Here Judge Taylor, amply supported by the record and properly viewing the facts as a whole, *United States* v. *Magda*, *supra*, slip op. 1041; *United States* v. *Hall*, 525 F.2d 857, 859 (D.C. Cir. 1976), delineated "specific and articulable facts which taken together with rational inferences from the facts" reasonably warranted Quinn's questioning of Grant and Lawrence, *Terry* v. *Ohio*, *supra*, 392 U.S. at 21; *United States* v. *Magda*, *supra*, slip op. at 1041. These included:

> "(1) Observation of defendants in a location known to be a common source of false identification materials.

(2) Observation of defendant Grant purchasing not one, but two facsimile social security cards.

(3) The above activity observed on a day known to be prime time for activity in stolen checks.

(4) Observation of defendant Lawrence carrying a semi-disguised brown package with what appeared to be a Polaroid camera sticking out.

(5) Observation, within five feet, of portion of a U.S. Treasury check, and brown manila envelopes similar to those in which checks are mailed, both protruding from Lawrence's package.

(6) Observation of Lawrence's 'stiffening' on apparent sighting of Agent Dougherty." (Op. 11-12).

It is well settled that the reputation of an area for certain criminal activity may legitimately influence a law enforcement officer's judgment in determining reasonable suspicion. *United States* v. *Magda*, *supra*, slip op. at 1041; *United States* v. *Brignoni-Ponce*, *supra*, 422 U.S. at 884-85; *United States* v. *Hall*, *supra*, 525 F.2d at 859; *United States* v. *Santana*, *supra*. Agent Quinn had made more than 25 arrests in which Playland identification was used and specifically was observing Playland to show Agent Dougherty the place where illegal identification used in check-cashing was most often bought. Thus it was certainly reasonable for Quinn's suspicions to be aroused by the Playland purchases.

Similarly, the observation of the United States Treasury check and the corners of two or more envelopes inside a partially concealed bag properly added to Agent Quinn's suspicion. In *Santana*, *supra*, the mere possession of an unopened brown paper bag believed to contain

drugs, in light of the surrounding circumstances indicating drug trafficking, was a crucial factor in finding reasonable suspicion. *A fortiori*, the observance of an actual check and envelopes containing possibly more checks, in light of the previous purchase of facsimile social security cards, would also warrant at least the asking of a few questions. The Eighth Circuit found reasonable suspicion to uphold an investigative stop in which, unlike in the instant case, defendant's freedom of movement was actually restrained by the arresting officers, on facts almost identical to those in the present case. *United States* v. *Owens*, 472 F.2d 780 (8th Cir.), *cert. denied*, 412 U.S. 951 (1973).

In addition, Lawrence's suspicious behavior upon seeing Agent Dougherty was a further relevant factor which, in light of the other circumstances, could legitimately influence Agent Quinn's decision to stop Grant and Lawrence. *United States* v. *Magda*, *supra*, slip op. at 1042; *United States* v. *Hall*, *supra*, at 860; *People* v. *DeBour*, 40 N.Y. 2d 210 (1976) (mere crossing of street in order to avoid passing by police officer sufficient to justify questioning).

In addition, Judge Taylor properly considered Agent Quinn's vast experience involving check related criminal offenses. *United States* v. *Magda*, *supra*, slip op. at 1041-42; *United States* v. *Hall*, *supra*, 525 F.2d at 859; *United States* v. *Wabnik*, 444 F.2d 203, 205 (2d Cir.), *cert. denied*, 404 U.S. 851 (1971). Compared to the police officer's having seen some narcotics arrests in *Magda*, to which this Court gave weight despite a contrary finding in the District Court, Agent Quinn's involvement in more than 400 check-cashing cases is awesome. Surely it is, as Judge Taylor recognized, entitled to considerable weight in determining the reasonableness of his suspicions.

Finally, in considering the reasonableness of the stop, the Court must consider the degree of intrusion into the

defendant's privacy. In the instant case the intrusion was minimal. As in *United States* v. *Magda*, *supra*, 1) there was no attempt to harass or intimidate either Grant or Lawrence; 2) there was no physical restraint; 3) no guns were drawn; 4) the defendants were free to leave at any time. Quinn, as did the officer in *Magda*, merely asked the defendants to answer questions. This is in contrast to even more intrusive stops that were held to be valid investigative stops and not arrests in *Terry* v. *Ohio*, *supra*, and *Adams* v. *Williams*, *supra*. Further, in this case the questioning of the defendants took place unobtrusively in the middle of the afternoon in an area of great activity, unlike the interrogation in an enclosed, isolated room sanctioned in *United States* v. *Salter*, *supra*, 421 F.2d at 1328-9, on an even weaker showing of reasonable suspicion.

In sum, Agent Quinn, given his considerable experience, by unobtrusively stopping the defendants and asking them questions based upon an abundance of reasonable suspicion adopted an appropriate intermediate response between arresting the defendants immediately and ignoring their actions entirely. Indeed, this case is clearly governed *a fortiori* by this Court's sanction of similarly unintrusive procedures taken on the basis of a far weaker demonstration of "reasonable suspicion" in *United States* v. *Magda*, *supra*.* Agent Quinn's response was "the essence of good police work". *Adams* v. *Williams*, *supra*, 407 U.S. at 145.

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* In *Magda*—which is not even cited in Grant's brief—a police officer in the vicinity of the Playland area merely saw two men exchange something and then walk away when they observed the officer. Even though the officer never saw the object passed and had no independent reason to suppose that it was contraband, and even though the officer had vastly less experience than did Quinn, this Court held that those bare facts supported a "stop" and questioning that was identical to the "stop" in this case.

B. Lawrence's Consent to Search the Paper Bag

The District Court found, and it is not challenged here,* that Lawrence voluntarily consented to the non-custodial search of the paper bag in which most of the incriminating evidence Grant seeks to supress was found. *Schneckloth* v. *Bustamonte*, 412 U.S. 218 (1973); *Bumper* v. *North Carolina*, 391 U.S. 543, 548 (1968); *United States* v. *Watson*, 423 U.S. 411, 424 (1976). The fact that Grant did not affirmatively join Lawrence in Lawrence's consent, contrary to the suggestion of defendant (Br. p. 5) is, of course, of no relevance, since the bag was in Lawrence's custody. *United States* v. *Matlock*, 415 U.S. 164, 169-72 (1974); *Frazier* v. *Cupp*, 394 U.S. 731, 740 (1969). *See United States* v. *Gargiso*, 456 F.2d 584 (2d Cir. 1972). Indeed, in those cases the defendant, unlike Grant in this case, had no opportunity to convince the party giving consent to refrain from doing so.

C. The Arrest of Grant and Lawrence

The District Court found that after questioning the defendants and searching the bag Quinn had developed sufficient evidence to provide probable cause to arrest both defendants without a warrant. This conclusion was undoubtedly correct.

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* Even though Grant has wisely not raised the issue on appeal, it should be noted that the District Court's explicit finding that the consent was voluntary was not only not "clearly erroneous," *United States* v. *Wiener*, 534 F.2d 15, 17 (2d Cir. 1976); *United States* v. *Bronstein, supra*, 521 F.2d at 463-64, but was clearly correct. See, in addition to the cases cited above, *United States* v. *Miley*, 513 F.2d 1191, 1204-05 (2d Cir.), *cert. denied*, 423 U.S. 842 (1976); *United States* v. *Gaines*, 441 F.2d 1122 (2d Cir.), *vacated and remanded on other grounds*, 404 U.S. 878 (1970).

The test for the existence of probable cause to arrest without a warrant is whether or not the facts available to the law enforcement officer at the moment of arrest would warrant a man of reasonable caution in the belief that a crime has been committed. *Beck* v. *Ohio*, 379 U.S. 89, 91 (1964); *Carroll* v. *United States*, 267 U.S. 132, 162 (1925); *United States* v. *Edmonds*, 535 F.2d 714, 719 (2d Cir. 1976); *United States* v. *Rueda*, —— F.2d ——, Dkt. No. 76-1429, slip op. 1765, 1773 (2d Cir., February 10, 1977); *United States ex rel. La Belle* v. *La Vallee*, 517 F.2d 750, 753 (2d Cir. 1975), *cert. denied*, 423 U.S. 1062 (1976).

After having properly stopped the defendants for questioning and after having examined the contents of Lawrence's "bag" pursuant to his voluntary consent, Quinn had developed ample probable cause with which to arrest the defendants for possession of stolen mail.* The factors that demonstrate probable cause are numerous. First, the large number of checks, including two United States Treasury checks of different types in Lawrence's possession on "check day," wrapped up in a paper bag, was in and of itself highly suspicious. In addition, the fact that the checks apparently originated from a variety of sources, were made payable to different

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* The law is now clear that if probable cause existed for the arrest the agents had the right to arrest the defendants on the spot without first obtaining a warrant, irrespective of whether a warrant could have been obtained or not. *United States* v. *Watson*, 423 U.S. 411 (1976); see also *United States* v. *Santana*, U.S. 44 U.S.L.W. 4970 (June 22, 1976). Indeed, since the arrest took place in a busy, public place based on facts only very recently known to the arresting agents, they had no opportunity to procure a warrant. Having probable cause to arrest the defendants the agents were entitled to seize the contents of the paper bag, search the defendants personally and seize the contraband or incriminating evidence from them. *United States* v. *Robinson*, 414 U.S. 218 (1973); *Gutafson* v. *Florida*, 414 U.S. 260 (1973); *Chimel* v. *California*, 395 U.S. 752 (1969).

payees, and were of the nature of those usually mailed, all irresistibly implied that the checks did not belong to the defendants and, indeed, were stolen from the mail. Additionally, Quinn observed various types of identification, including medical identification cards, employee identification cards, and social security cards. Some of these were in the name of different people, some were blank. He also saw detached pictures of both defendants and plastic coverings of the nature used to protect identification. Even more inculpatory was the "Freddie Mitchell" medical identification card, which had been altered to fit the description of one of the defendants, together with a Treasury check for $53.89 made payable to "Freddie Mitchell." Thus, not only did the defendants have in their possession stolen checks, and the paraphernalia to match identification cards to them, but alteration of legitimate identification matching those checks was further evidence that the defendants were engaging in activity in connection with the checks that was illicit rather than innocent.

Particularly showing probable cause to arrest Grant, in addition to Grant's association with Lawrence, was (1) Grant's hesitating answers, (2) Grant's own purchase of *two* facsimile social security cards * and (3) Grant's picture mixed in with the false identification and checks contained in the paper bag possessed by Lawrence.

Factoring into this equation Agent Quinn's own knowledge and experience in identifying postal and check forgery violations, see cases cited in part A, *supra*, any reasonable man who was in Quinn's position could come to no other conclusion than that the checks were stolen and that the defendants were in the process of jointly attempting to cash them for their own benefit.

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* A person having an innocent use for this bogus identification for himself would need no more than one such card.

Indeed, although each case involving determinations of probable cause, must turn on its own facts, *Wong Sun* v. *United States*, 371 U.S. 471, 479 (1963); *Sibron* v. *New York*, 392 U.S. 40, 59 (1968); *United States ex rel. McCullers* v. *McMann*, 370 F.2d 757, 759 (2d Cir. 1967), this Circuit has found probable cause to arrest in situations with far less probable cause than that present in the instant case. For example, in *United States* v. *Tramunti*, 513 F.2d 1087, 1100-04 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975), probable cause was found on the basis of the defendants' prior dealings in narcotics, their use of a dealer's automobile, and the presence of a suitcase in the car. Thus the court found probable cause to arrest for narcotics violations on the basis of purely "circumstantial" evidence while in the instant case Quinn had in his possession actual, hard evidence of stolen mail violations.* Even in situations where the arresting officer has viewed the possible contraband, as in *United States* v. *Tramontana*, 460 F.2d 464 (2d Cir. 1972), the courts have upheld warrantless arrests on grounds considerably weaker than in the instant case. In *Tramontana*, the officer noticed some record cartons as well as a mailman's cap in the back trunk of defendant's car. He also noticed that the mailing labels were torn off and that the defendant was giving evasive answers to his investigating questions. In this case, the mailing addresses were on the checks and conflicted (as did the various ID's in the defendants' possession). Considering in addition the altered ID's as well as the other factors present,

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* The decision in *United States* v. *Tramunti*, *supra*, 513 F.2d at 1104 also makes clear that the fact that some of the evidence discovered did not turn out to be what the agents expected, e.g. here the fact that the Polaroid camera turned out to be a calculator, does not in any way affect the considering of the facts ultimately proved wrong in evaluating reasonable suspicion to stop or probable cause to arrest. See also *Hill* v. *California*, 401 U.S. 797 (1971); *United States* v. *Rosario*, 543 F.2d 6 (2d Cir. 1976).

surely the quantum of probable cause is greater here than in *Tramontana*. In any event, simply relying on facts of this case, it is clear that the contents of the bag coupled with defendant's previous suspicious behavior and Quinn's own experience clearly provided sufficient probable cause to make the arrest. *United States ex rel. Mason* v. *Murphy*, 351 F.2d 610 (2d Cir. 1965). *United States* v. *Owens*, *supra*.

D. The Reasonableness of Quinn's Behavior

The ultimate issue in this case was whether on August 3, 1976, Agent Quinn "acted reasonably on the basis of all the facts at hand." *United States* v. *Tucker*, 380 F.2d 206, 212 (2d Cir. 1967). See also *South Dakota* v. *Opperman*, — U.S. —, 44 U.S.L.W. 5294, 5296 (July 7, 1976). In this case, the Government submits Agent Quinn acted methodically but carefully in following up his initial observations. At each stage of his investigation he used no more intrusion than warranted by the facts, and indeed the arrest was a model of constitutionally effective and reasonable law enforcement.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Peter M. Bloch being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 22nd day of February, 1977, he served a copy of the within brief by placing the same in a properly postpaid franked envelope addressed:

Joseph Stone, Esq
277 Broadway
New York, New York

And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Peter M. Bloch

Sworn to before me this
22nd day of February 1977

JEANETTE ANN GRAYER
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Commission Expires March 30, 1977